

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-35475-DDO

Chapter 7

Alina C. Kruse,

Debtor(s).

***NOTICE OF HEARING AND
MOTION FOR RELIEF FROM STAY***

TO: Debtor(s) and Attorney for Debtor(s); Mary Jo A Jensen-Carter, Chapter 7 Trustee; U.S. Trustee; and other parties in interest.

1. Arcadia Financial Ltd., a secured creditor of Debtor(s), by its undersigned attorney, moves the Court for the relief requested below, and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at **9:30 am** on **Wednesday, October 20, 2004**, before the Honorable Dennis D. O'Brien, in Courtroom No. 228A, at the U.S. Federal Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101.

3. Any response to this motion must be filed and delivered not later than Friday, October 15, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than Monday, October 11, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This motion arises under 11 U.S.C. §362 and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1 through 9013-3. Arcadia Financial Ltd. seeks relief from the automatic stay of 11 U.S.C. §362 with respect to certain personal property owned by Debtor(s).

5. The petition commencing this Chapter 7 case was filed on September 20, 2004 and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a), Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding.

6. Arcadia Financial Ltd. holds a valid, perfected interest in a 2000 Ford F150, vehicle identification number 1FTRX18L6YNB10539 (the "Vehicle").

7. Copies of Arcadia Financial Ltd.'s agreement with Debtor(s) (the "Contract") and evidence of perfection of Arcadia Financial Ltd.'s interest in the Vehicle are attached hereto as Exhibits A and B and incorporated herein by reference.

8. Payments due under the terms of the Contract for the months of June through September 2004 totaling \$2,098.00 plus late charges, have not been made by the Debtor(s). No evidence has been provided to verify insurance coverage on the Vehicle.

9. The balance due under the Contract is \$17,568.77 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$13,500.00.

10. Arcadia Financial Ltd.'s interest is depreciating, while Debtor(s) are failing to make payments. Arcadia Financial Ltd. does not have, and has not been offered, adequate protection of its interest in the Vehicle. There is no appreciable equity in the Vehicle and, in view of the fact that this is a Chapter 7 liquidation proceeding, the Vehicle is not necessary for an effective reorganization.

11. The failure of the Debtor(s) to make payments pursuant to the Contract or otherwise provide Arcadia Financial Ltd. with adequate protection of its interest in the Vehicle and the failure of Debtor(s) to provide evidence of insurance on the Vehicle constitutes cause, within the meaning of 11 U.S.C. § 362(d)(1) and 362(d)(2), entitling Arcadia Financial Ltd. to relief from the stay.

12. Arcadia Financial Ltd. requests that any order modifying the automatic stay be effective immediately as allowed under Federal Bankruptcy Rule 4001(a)(3).

13. If testimony is necessary as to any facts relevant to this motion, M. Rudenko, or some other representative of Movant, will testify on behalf of Arcadia Financial Ltd..

14. This notice of motion and motion also serves as notice of default as may be required by Cobb v. Midwest Recovery Bureau Co., 295 N.W.2d 232 (Minn. 1980). If the default is not cured before the hearing, Arcadia Financial Ltd. will repossess the Vehicle promptly upon the Court signing the Order.

15. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

WHEREFORE, Arcadia Financial Ltd. respectfully moves the Court for an order (i) modifying the automatic stay of 11 U.S.C. §362 so as to permit Arcadia Financial Ltd. to foreclose its interest in the Vehicle in accordance with Minnesota law, (ii) finding that Bankruptcy Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure is not applicable, and (iii) granting such other relief as may be just and equitable.

Dated: September 27, 2004

STEWART, ZLIMEN & JUNGERS

By /s/ Bradley J. Halberstadt
Bradley J. Halberstadt (#215296)
Attorneys for Movant
430 Oak Grove Street, Ste. 200
Minneapolis, Minnesota 55403
(612) 870-4100

UNITED STATES BANKRUPTCY COURT
ST. PAUL DISTRICT OF MINNESOTA

In re:

Chapter 7 Case

ALINA KRUSE,

Bky. No. 04-35475

Debtor(s).

Affidavit

I, Mariam Rudenko, of Arcadia Financial Ltd, declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief.

1. Arcadia Financial Ltd has a security interest in the following (the "Collateral"):
2000 FORD F150 STYLE VIN 1FTRX18L6YNB10539.
2. \$17,568.77 is the outstanding balance under the contract.
3. \$2,098.00 is the amount of the existing delinquency under the contract.
4. \$13,500.00 is the fair market value of the Collateral.
5. No appropriate insurance has been verified.

Further your affiant sayeth not.

Dated: 9/27/2004

Mariam Rudenko

Mariam Rudenko
Bankruptcy Specialist
Arcadia Financial Ltd

Subscribed and sworn to before me on
September 27, 2004

Jeffrey William Johnson
Notary



**VEHICLE INSTALLMENT CONTRACT
AND SECURITY AGREEMENT**

Seller

Buyer

No.
Date

05/18/2002

HASTINGS AUTOMOTIVE, INC.
3625 VERMILLION STREET

ALINA CATHERINE KRUSE

63 ANTLIA AVE

HASTINGS AUTOMOTIVE, INC. Buyer above, and
guarantor, jointly and individually.

SALE: You agree to purchase from us, over time, the Motor Vehicle (Vehicle) and services described below. Your purchase is subject to the terms and conditions of this contract and security agreement (Contract). The Vehicle is sold in its present condition, together with the usual accessories and attachments.

Description of Motor Vehicle Purchased: Year 2000, Make FORD, Model F150 PICKUP, VIN 1FTRX18L6YWB10539, Lic. No. YN-62, Other: ☒ New ☐ Used

Description of Trade-In: 93 PLYMOUTH G VOYAGER, 1P4GH44R0PX587676

SECURITY: To secure your payment and performance under the terms of this Contract, you give us a security interest in the Vehicle, all accessories, attachments, accessories, and equipment placed in or on the Vehicle, together called Property, and proceeds of the Property, this Contract.

PROMISE TO PAY AND PAYMENT TERMS: You promise to pay us the principal amount of \$ 22613.72, plus finance charges according to the unpaid balance at the rate of 16.48% per year from today's date until paid in full. Finance charges accrue on the TRUTH IN LENDING DISCLOSURES. You also agree to pay this Contract according to the payment schedule and late charge provisions shown in

LOAN ADMINISTRATION FEE: You agree to pay an additional, nonrefundable loan administration fee of \$25.00 that will be ☐ paid in cash, ☐ paid pro rata over the contract term, ☐ withheld from the proceeds (if this fee is withheld from the proceeds, the amount is included in the principal sum).

DOWN PAYMENT: You also agree to pay, or apply to the Cash Price, on or before today's date, any cash, rebate and net trade-in value described in the ITEMIZATION OF AMOUNT FINANCED. ☐ You agree to make deferred payments as part of the cash down payment as reflected in your Payment Schedule.

TRUTH IN LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	AMOUNT FINANCED The amount of credit provided to you or on your behalf.	TOTAL OF PAYMENTS The amount you will have paid when you have made as scheduled payments.	TOTAL SALE PRICE The total cost of your purchase on credit, including your down payment of
16.48%	\$ 13360.28	\$ 22613.72	\$ 36964.00	\$ 4950.00
Payment Schedule: Your payment schedule will be				

Number of Payments	Amount of Payments	When Payments Are Due
72	499.50	MONTHLY BEGINNING 07/02/2002

Security: You are giving a security interest in the Motor Vehicle purchased.

☐ Late Charge: If a payment is more than _____ days late, you will be charged _____. ☐ This amount may increase so as to always be the highest amount allowed by law under Minn. Stat. § 47.50.

Prepayment: If you pay off this Contract early, you will not have to pay a penalty.

Contract Provisions: You can see the terms of this Contract for any additional information about nonpayment, default, any required repayment before the scheduled date, and prepayment refunds and penalties.

CREDIT INSURANCE: Credit life, credit disability (accident and health), and any other insurance coverage quoted below, are not required to obtain credit and we will not provide them unless you sign and agree to pay the additional premium. If you want such insurance, we will obtain it for you (if you qualify for coverage). We are quoting below ONLY the coverage you have chosen to purchase.

Credit Life Insured: ALINA CATHERINE KRUSE
☐ Single ☐ Joint Prem. \$ 533.00/mo 72
Credit Disability Insured: ☐ Single ☐ Joint Prem. \$ N/A/mo N/A

Your signature below means you want (only) the insurance coverage(s) quoted above. If none are quoted, you have declined any coverage we offered.

Buyer: ALINA KRUSE 05/18/2002

PROPERTY INSURANCE: You must insure the Property securing this Contract. You may purchase or provide the insurance through any insurance company reasonably acceptable to us. The collision coverage deductible may not exceed \$ N/A. If you get insurance from or through us we will pay \$ N/A for _____ of coverage.

This premium is calculated as follows:
☐ \$ N/A Deductible, Collision Coverage \$ N/A
☐ \$ N/A Deductible, Comprehensive Cov. \$ N/A
☐ Fire-Theft and Combined Additional Coverage \$ N/A

Liability Insurance: coverage for bodily injury and motor vehicle damage caused to others is not included in this Contract unless checked and indicated.

MOTOR VEHICLE SERVICE CONTRACT: With your purchase of the Vehicle, you agree to purchase a Motor Vehicle Service Contract to cover _____.

This Service Contract will be in effect for 48 months or 90000 miles.

ITEMIZATION OF AMOUNT FINANCED

Vehicle Price (incl. sales tax of \$ 1293.18)	\$ 24688.18
Service Contract, Paid to: AUTOGUARD	\$ 2095.00
Cash Price	\$ 26783.18
Manufacturer's Rebate	\$ N/A
Cash Down Payment	\$ 4300.00
Deferred Down Payment	\$ N/A
a. Total Cash/Rebate Down	\$ 4300.00
b. Trade-In Allowance	\$ 3500.00
c. Less: Amount owing	\$ 2850.00
Paid to: COMMUNITY BANK WRTHELD	
d. Net Trade-In (b. minus c.)	\$ 650.00
e. Net Cash/Trade-In (a. plus d.)	\$ 4950.00
Down Payment (a.; disclose as \$0 if negative)	\$ 4950.00
Unpaid Balance of Cash Price	\$ 21833.18
Paid to Public Officials - Filing Fees	\$ 108.50
Insurance Premiums	\$ 633.04
Amount to Chargee line a. (if a. is negative)	\$
To: HASTINGS AUTO. DOC. FEE	\$ 26.00
To: DEP REG FEE	\$ 7.00
To: MVT TA PLATE FEE	\$ 7.00
To:	\$ N/A
Total Other Charges/Amounts Pd. to Others	\$ 780.54
Less: Prepaid Finance Charges	\$ N/A
Amount Financed	\$ 22613.72

*We may retain or receive a portion of this amount.

NOTICE TO BUYER

(1) Do not sign this agreement before you read it or if it contains any blank spaces. (2) You are entitled to a completely filled-in copy of this agreement. (3) Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the finance charge. (4) IMPORTANT: THIS MAY BE A BINDING CONTRACT AND YOU MAY LOSE ANY DEPOSITS IF YOU DO NOT PERFORM ACCORDING TO ITS TERMS.

BY SIGNING BELOW BUYER AGREES TO THE TERMS ON PAGES 1 AND 2 OF THIS CONTRACT AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS CONTRACT.

Buyer: Alina Kruse
Signature _____ Date _____

Signature _____ Date _____

Seller: _____
Signature _____ Date _____

ASSIGNMENT: This Contract and Security Agreement is assigned to ARCADIA FINANCIAL LTD.

Assignee, phone _____ This assignment is made under the terms of a separate agreement. ☐ under the terms of the ASSIGNMENT BY SELLER on page 2. ☐ This assignment is made with recourse.

HASTINGS AUTOMOTIVE, INC. 05/18/2002

MINNESOTA VEHICLE INSTALLMENT CONTRACT AND SECURITY AGREEMENT
© 1993, 1995 Dakota Systems, Inc. 6100 Hwy 101, Suite 101, Minneapolis, MN 55425

MINNESOTA DEPARTMENT OF PUBLIC SAFETY
DRIVER & VEHICLE SERVICES DIVISION
445 MINNESOTA ST., ST. PAUL, MN 55101
CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

KRUSE ALINA CATHERINE
63 AMELIA AVE
HASTINGS MN 55033

First Class
U.S. Postage
PAID
Permit No. 171
St Paul, MN

EAH062

1ST SECURED PARTY

LIEN HOLDER

Year 00	Make FORD	Model 4CCOF	Title NR J2260P533
VIN 1FTRX18L6YNB10539		Security Date 05/18/02	Rebuilt NO

RETAIN THIS DOCUMENT - See reverse
side of this form for removing this lien.

ARCADIA FINANCIAL LTD
PO BOX 1437
MINNEAPOLIS MN 55440-1437

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No.04-35475-DDO
Chapter 7

Alina C. Kruse,

Debtor(s).

***MEMORANDUM IN SUPPORT OF
MOTION FOR RELIEF FROM STAY***

Arcadia Financial Ltd. submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Arcadia Financial Ltd. holds a perfected interest in a 2000 Ford F150 with a vehicle identification number 1FTRX18L6YNB10539 (the "Vehicle"). Payments due under the terms of the Contract for the months of June through September 2004 totaling \$2,098.00 plus late charges, have not been made by the Debtor(s). The balance due under the Contract is \$17,568.77 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$13,500.00. No evidence has been provided to verify insurance coverage on the Vehicle.

ARGUMENT

Pursuant to Section 362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such [creditor]." 11 U.S.C. Section 362(d)(1). No payments have been made as required by the Contract between the Debtor(s) and Arcadia Financial Ltd. has otherwise not been provided with adequate protection of interest in the Vehicle. Such failure constitutes cause, within the meaning of Section 362(d)(1), entitling Arcadia Financial Ltd. to relief from the stay. United Savings Assn. of Texas v. Timbers of Inwood Forest Assoc., Ltd. (In re Timbers of Inwood Assoc., Ltd.), 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988).

Pursuant to Section 362(d)(2) of the Bankruptcy Code, relief from the stay is also appropriate where no equity exists and the property is not necessary to an effective reorganization. In re Albany Partners, Ltd., 749 F.2d 670 (11th Cir. 1984). The balance due under the Contract is \$17,568.77 as of the date hereof. The fair market value of the Vehicle is approximately \$13,500.00. Clearly, no appreciable equity exists in the Vehicle. Finally, as this a Chapter 7 case, the Vehicle is not necessary to an effective reorganization.

CONCLUSION

For all the reasons set forth herein, Arcadia Financial Ltd. is entitled to an order terminating the automatic stay of 11 U.S.C. § 362 and authorizing it to foreclose its interest in the Vehicle in accordance with Minnesota law.

Dated: September 27, 2004

STEWART, ZLIMEN & JUNGERS

By /s/ Bradley J. Halberstadt
Bradley J. Halberstadt (#215296)
Attorneys for Movant
430 Oak Grove Street, Ste. 200
Minneapolis, Minnesota 55403
(612) 870-4100

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Alina C. Kruse

Debtor(s).

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 04-35475-DDO

Bradley J. Halberstadt, an agent of Stewart, Zlimen & Jungers, attorney(s) licensed to practice law in this court, with office address of 430 Oak Grove Street, Ste. 200, Minneapolis, Minnesota 55403, declares that on the date set forth below, I served the annexed **Notice of Hearing and Motion For Relief From Stay** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota addressed to each of them as follows:

United States Trustee
Suite 1015
300 South 4th Street
Minneapolis, MN 55415

(Attorney for Debtor(s))
Richard J. Pearson
PO Box 120088
New Brighton, MN 55112

(Trustee)
Mary Jo A Jensen-Carter
1339 E. County Rd D
Vadnais Heights, MN 55109

(Debtor(s))
Alina C. Kruse
1601 86th Ave.
Hammond, WI 54015

And I declare, under penalty of perjury, that the foregoing is true and correct.

Date: September 27, 2004

Signed: /e/ Bradley J. Halberstadt

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-35475-DDO
Chapter 7

Alina C. Kruse,

Debtor(s).

***ORDER GRANTING
MOTION FOR RELIEF FROM STAY***

The above-entitled matter came before the Court for hearing on Wednesday, October 20, 2004 on the motion of Arcadia Financial Ltd. seeking relief from the automatic stay of 11 U.S.C. §362.

Appearances were noted in the Court's record. Based upon the proceedings on said date, the statements of counsel, and all of the files and records herein, the Court now finds that cause exists entitling Arcadia Financial Ltd. to the relief requested.

NOW, THEREFORE, IT IS HEREBY ORDERED that the automatic stay of 11 U.S.C. §362 is immediately terminated as to Arcadia Financial Ltd., and Arcadia Financial Ltd. is authorized to foreclose its interest in the subject 2000 Ford F150, vehicle identification number 1FTRX18L6YNB10539 in accordance with Minnesota law. Notwithstanding Fed R. Bankr. P. 4001(a)(3), this order is effective immediately.

Dated: _____

Dennis D. O'Brien
United States Bankruptcy Judge